



Jönköpings tingsrätt  
Box 2243, 550 02 Jönköping  
Sweden

03 July 2014

**RE:** Case of Ellinor Grimmark (19760930-2406) vs. Landstinget i Jönköpings Län.

## **Introduction**

1. Alliance Defending Freedom [ADF], an international human rights legal organization of more than 1500 allied attorneys globally, writes this brief on behalf of midwife Ellinor Grimmark. ADF is currently involved in more than 30 cases before the European Court of Human Rights as well as cases before the Inter-American Court of Human Rights, the United States Supreme Court and among several United Nations bodies. ADF has Special Consultative status with the United Nations. It has also garnered accreditation at the Fundamental Rights Agency of the European Union, the European Parliament, the Organization for Security and Co-Operation in Europe and the Organization of American States. ADF is a leader in the area of litigation surrounding rights of conscience.
2. Representing the European presence of Alliance Defending Freedom, we are greatly concerned with the case of Mrs. Grimmark. Her case is representative of an emerging human rights problem in Sweden regarding failure to recognize rights of conscientious objection. This problem is further highlighted in the collective complaint currently being heard on its merits by the European Committee of Social Rights; No. 99/2013, *Federation of Catholic Family Associations in Europe (FAFCE) v. Sweden*.

## **Rights of Conscience**

3. ADF stands by Mrs. Grimmark and the position of ProVita precisely because rights of conscience are explicitly recognized in international law, and among the commitments Sweden has accepted through the treaty and convention ratification process. The Grand Chamber of the European Court of Human Rights has itself explicitly affirmed rights of conscience for sincerely held religious and moral beliefs as falling within the gambit of Article 9 of the Convention.<sup>1</sup> In the landmark case of *Bayatyan v. Armenia*, the Grand Chamber for the first time expressly upheld the right to conscientious objection. The Grand Chamber held in *Bayatyan* that:

Opposition to military service, where it is motivated by a serious and insurmountable conflict between the obligation to serve in the army and a person's conscience or his deeply and genuinely held religious or other

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<sup>1</sup>ECHR, *Bayatan v. Armenia* [GC], (2012) 54 E.H.R.R. 15.



beliefs, constitutes a conviction or belief of sufficient cogency, seriousness, cohesion and importance to attract the guarantees of Article 9.<sup>2</sup>

4. While the Court held that one means of expressing the guaranteed right of conscience is through exemption from military service, the judgment by no means limited the expression of conscientious objection only to military service. It is thus worth quoting the Grand Chamber at length, as the reasoning of the Court could quite easily apply to other situations, such as conscientiously objecting from being involved in taking part in an abortion.

124. The Court cannot overlook the fact that, in the present case, the applicant, as a member of Jehovah's Witnesses, sought to be exempted from military service not for reasons of personal benefit or convenience but on the ground of his genuinely held religious convictions. (...) Thus, the system existing at the material time imposed on citizens an obligation which had potentially serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like the applicant, refused to perform military service. In the Court's opinion, such a system failed to strike a fair balance between the interests of society as a whole and those of the applicant. It therefore considers that the imposition of a penalty on the applicant, in circumstances where no allowances were made for the exigencies of his conscience and beliefs, could not be considered a measure necessary in a democratic society. Still less can it be seen as necessary taking into account that there existed viable and effective alternatives capable of accommodating the competing interests, as demonstrated by the experience of the overwhelming majority of the European states.

126. The Court further reiterates that pluralism, tolerance and broadmindedness are hallmarks of a "democratic society". Although individual interests must on occasion be subordinated to those of a group, democracy does not simply mean that the views of a majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of people from minorities and avoids any abuse of a dominant position (...) Thus, respect on the part of the State towards the beliefs of a minority religious group like the applicant's by providing them with the opportunity to serve society as dictated by their conscience might, far from creating unjust inequalities or discrimination as claimed by the Government, rather ensure cohesive and stable pluralism and promote religious harmony and tolerance in society.<sup>3</sup>

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<sup>2</sup> *Id.* at § 110.

<sup>3</sup> *Id.* at §124, 126.



5. The cited case is of critical value and importance, because it overruled previous decisions and a settled jurisprudence by the European Commission (“the Commission”). In the case of *X v. Austria*<sup>4</sup>, the Commission stated that, in interpreting Article 9 of the Convention, it had also taken consideration the terms of Article 4 § 3 (b) of the Convention, which provide that forced or compulsory labour should not include “any service of a military character or, in cases of conscientious objectors, in countries where they are recognised, service exacted instead of compulsory military service”. The Commission made an important textual argument, that by including the words “in countries where they are recognised” in Article 4 § 3 (b), a choice was left to the High Contracting Parties whether or not to recognise conscientious objectors in the military arena and, if they were so recognised, to provide some substitute service.
6. Notwithstanding the textual basis of Article 4 § 3 (b), the Court came to the above cited conclusion that not providing for conscientious objection in the military field “imposed on citizens an obligation which had serious implications for conscientious objectors while failing to allow any conscience-based exceptions and penalising those who, like to applicant, refused to perform military service. In the Court’s opinion, such a system failed to strike a fair balance between the interests of society as a whole and those of the applicant.”<sup>5</sup>
7. It should follow *a fortiori* that in the context of medical staff and the performance of abortions, without a clear textual reference to the contrary, a failure of a state actor to recognize conscientious objection runs afoul of striking a fair balance between the interests of the society and those of medical staff. This is particularly so where a reasonable accommodation is so readily available without effecting patient care whatsoever.
8. The reasoning of the Grand Chamber was immediately then applied in the conscientious objection case of *Bukharatyan v. Armenia*,<sup>6</sup> thus cementing the right under Convention law – which will surely be developed further in the future. In reaching this decision, the Court also noted at length the developments in international law on the right to conscientious objection.
9. Moreover, the European Court of Human Rights has also very recently upheld the right to act on one’s deeply held convictions in a number of settings using the concept of reasonable accommodations to guarantee protection of rights enshrined under Article 9. For example, in the case of *Vartic v. Romania (No. 2)*, application no. 14150/08, judgment of 17 December 2013, the European Court of Human Rights found a violation of a Moldovan prisoner’s right of conscience for refusing to serve him a vegetarian diet in accordance with his Buddhist religious convictions. Similarly, the applicant in *Jakóbski v. Poland* (2010) 30 BHRC 417 was a Buddhist and a detainee in a Polish

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<sup>4</sup> Commission decision of 2 April 1973, no. 5591/72.

<sup>5</sup> *Bayatyan* at § 124.

<sup>6</sup> (Application no. 37819/03) judgment of 10 January 2012.



prison, serving an eight year prison sentence for rape. He had asked the prison authorities to serve him meat-free meals in order to comply with Mahayana Buddhism but the prison authorities only provided him with a pork-free diet. Rather than simply stating that “Article 9 does not require that one should be allowed to manifest one's religion at any time and place of one's own choosing”, the Court held at § 54 that “the authorities failed to strike a fair balance between the interests of the prison authorities and those of the applicant, namely the right to manifest his religion through observance of the rules of the Buddhist religion.” It therefore concluded that there had been a breach of Article 9 of the Convention.

10. Furthermore, in the case of *Eweida and Others v. the United Kingdom*, the European Court of Human Rights held that "there is no requirement on the applicant to establish that he or she acted in fulfillment of a duty mandated by the religion in question" in order for the right to freedom of religion to have been interfered with. The United Kingdom courts had argued that a religious manifestation had to be a requirement of a religion to be protected – significantly, the Court overruled this reasoning.<sup>7</sup> Further, the *Eweida* Court overruled decades of pre-existing Commission case law which had indicated that the ability to resign from a job meant that there was no interference with Article 9:

Given the importance in a democratic society of freedom of religion, the Court considers that, where an individual complains of a restriction on freedom of religion in the workplace, rather than holding that the possibility of changing job would negate any interference with the right, the better approach would be to weigh that possibility in the overall balance when considering whether or not the restriction was proportionate.<sup>8</sup>

11. Also in the recent cases of *Federal Republic of Germany v Y* (Case C-71/11) and *Federal Republic of Germany v Z* (Case C-99/11) before the Court of Justice of the European Union (“CJEU”), the Advocate General gave his opinion on the correct understanding of Article 9 of the Convention. The Advocate General stated that if the so-called “core area” of religious belief comprised only of “private conscience”, it would render any protections for “the external manifestation of that freedom” effectively “meaningless”.<sup>9</sup> In its final ruling the CJEU held that the right to act upon sincerely held religious or moral beliefs clearly is extended to public manifestations of those beliefs. The Council of Europe’s Council of Ministers also affirms rights of conscience.<sup>10</sup>

12. Clearly, freedom of religion emptied of a right to act on one’s deeply held convictions is no longer the fundamental right that is guaranteed protection by the Convention. Instead,

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<sup>7</sup>ECHR, *Eweida and Others v. the United Kingdom*, judgment of 15 January 2013, application nos. 48420/10, 59842/10, 51671/10, 36516/10, § 82.

<sup>8</sup>*Id.*, § 83.

<sup>9</sup> Advocate General opinion at § 46.

<sup>10</sup> See Recommendation R(87)8 and Recommendation CM/Rec(2010)4.



it becomes the far more limiting freedom of “worship,”<sup>11</sup> which protects only private manifestations of faith.<sup>12</sup> Precisely stated, religious faith is allowed so long as its manifestation does not touch any other boundaries of civil society. This is not what the Convention envisioned, nor what it protects. Indeed, Article 9 § 1 lists a number of forms which manifestation of one’s religion or belief may take: not only worship but teaching, **practice and observance** as well.<sup>13</sup>

13. With regard to the issue of rights of medical professionals and abortion, the Parliamentary Assembly of the Council of Europe could not be more clear:

1. No person, hospital or institution shall be coerced, held liable or discriminated against in any manner because of a refusal to perform, accommodate, assist or submit to an abortion, the performance of a human miscarriage, or euthanasia or any act which could cause the death of a human foetus or embryo, for any reason.
2. The Parliamentary Assembly emphasises the need to affirm the right of conscientious objection together with the responsibility of the state to ensure that patients are able to access lawful medical care in a timely manner. The Assembly is concerned that the unregulated use of conscientious objection may disproportionately affect women, notably those with low incomes or living in rural areas.
3. In the vast majority of Council of Europe member states, the practice of conscientious objection is adequately regulated. There is a comprehensive and clear legal and policy framework governing the practice of conscientious objection by health-care providers ensuring that the interests and rights of individuals seeking legal medical services are respected, protected and fulfilled.
4. In view of member states' obligation to ensure access to lawful medical care and to protect the right to health, as well as the obligation to ensure respect for the right of freedom of thought, conscience and religion of health-care providers, the Assembly invites Council of Europe member states to develop comprehensive and clear regulations that define and regulate conscientious objection with regard to health and medical services, and which:

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<sup>11</sup>The Court of Appeal decision in *Ladele v. London Borough of Islington* [2009] EWCA Civ 1357 illustrates this narrowing of freedom of religion to freedom of worship. Lord Neuberger held at § 51: “...the effect on Ms Ladele of implementing the policy [performing same sex civil partnerships] did not impinge on her religious beliefs: she remained free to hold those beliefs, and free to worship as she wished.”

<sup>12</sup>For example, when the Charity Tribunal found against the last remaining Catholic adoption agency in England, it stated that “religious conviction in the sphere of personal belief is protected in both domestic and European equality law, so that acts of devotion, worship, and prayer (including ceremonies) are exempt from equality obligations” but held that there is an “essential distinction” between private acts of worship and the provision of a public service. *Catholic Care v. The Charity Commission for England and Wales*, CA/2010/0007, 26 April 2011 § 60.

<sup>13</sup>See *Hasan v. Bulgaria* (2002) 34 E.H.R.R. 55 at § 60 and *Metropolitan Church of Bessarabia v. Moldova* (2002) 35 E.H.R.R. 13 at § 114. Emphasis added.



- 4.1. guarantee the right to conscientious objection in relation to participation in the medical procedure in question;
- 4.2. ensure that patients are informed of any conscientious objection in a timely manner and referred to another health-care provider;
- 4.3. ensure that patients receive appropriate treatment, in particular in cases of emergency.<sup>14</sup>

14. The UNHRC has similarly recognized the importance of rights of conscience as a seminal component of freedom of thought, conscience and religion. Stating in General Comment 22 the Committee notes that while "...the Covenant does not explicitly refer to a right to conscientious objection, but the Committee believes that such a right can be derived from article 18..."<sup>15</sup> Accordingly, the Committee held in *Frédéric Foin v France*<sup>16</sup> that the applicant "was discriminated against on the basis of his conviction of conscience" and in 2006, in two cases against South Korea concerning conscientious objectors, found a violation of Article 18.<sup>17</sup>
15. As well as consistent support from the European Parliament,<sup>18</sup> Article 10 § 2 of the Charter of Fundamental Rights, which was proclaimed on December 7, 2000 and entered into force on December 1, 2009, explicitly states that: "The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right." The right to conscientious objection is thus recognized explicitly in the Charter.
16. A comparative survey of the laws regarding rights of conscience in Europe provide clear guidance on the notable vacuum present in Swedish law in this seminal area of human rights practice. Among Member States of the European Union, the vast majority have explicit Constitutional or statutory protections for rights of conscience. Furthermore, most of these countries also provide specific protections for medical staff in connection with performing abortions. Among those Member States without explicit textual reference to abortion, they nonetheless broadly define the enumerated right of conscience within their domestic law to include opting out of performing abortions. A detailed analysis of rights of conscience in the European Union follows:

## Statistical Summary on General Clauses

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<sup>14</sup>Resolution 1763 (2010).

<sup>15</sup>General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): 30/07/1993 at § 11.

<sup>16</sup>Communication No. 666/1995, 9 November 1999, at § 10.3.

<sup>17</sup>*Yoon v Republic of Korea* and *Choi v Republic of Korea*, Communications 1321/2004 and 1322/2004, UN Doc.CCPR/C/88/D/1321-1322/2004, January 23, 2007.

<sup>18</sup>For example, see the resolutions of the European Parliament of February 7, 1983, October 13, 1989, March 11, 1993 and January 19, 1994.



- A. Number of EU Member States with general clause(s) stipulating freedom of conscience: **20** out of 28 (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia).
- (i) Number of EU Member States with general clause(s) stipulating freedom of conscience from which a general right of conscientious objection may be derived: **17** out of 20, out of 28 (Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, France, Germany, Greece, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania).
- (ii) Number of EU Member States with general clause(s) stipulating freedom of conscience from which a general right of conscientious objection may *not* be derived: **3** out of 20, out of 28 (Finland, Hungary, Slovakia).
- B. Number of EU Member States without general clause(s) stipulating freedom of conscience: **8** out of 28 (Belgium, Denmark, Italy, Luxembourg, Netherlands, Spain, Sweden, United Kingdom).
- C. Number of EU Member States with general clause(s) stipulating freedom of religion from which a general right of conscientious objection may be derived: **2** out of 28 (Belgium, Spain).
- D. Number of EU Member States with general clause(s) directly stipulating a general right of conscientious objection: **2** out of 28 (Portugal, Slovenia).

### Table of Law and Legislation in EU Member States on Freedom of Conscience and Conscientious Objection

Member State	Relevant Law / Legislation		Provision	Content / Details
Austria	General	Austrian Constitution	Art 14	'Everyone is guaranteed complete freedom of conscience and creed. The enjoyment of civil and political rights is independent of religious belief. Nevertheless duties incumbent on nationals may not be prejudiced by religious beliefs. No one can be forced to observe a ritual act or to participate in an ecclesiastical ceremony in so far as he is not subordinate to another who is by law invested with such authority.'
	Specific		Art 9a(3)	'Every male Austrian is liable for military service. Conscientious objectors who refuse the fulfillment of compulsory military service and are exonerated there from must perform an alternative service. The details are settled by law.'
		Austrian Criminal Code	Art 97(2)	'No physician is required to perform an abortion or to participate in it, unless an abortion without delay is necessary to save the pregnant woman from an imminent, not

		Reproductive Medicine Act 1992 (Fortpflanzungsmedizingesetz, BGB1. No. 275/1992) s 6(1)		otherwise preventable death. This is also true for those working in the nursing profession, in medical-technical services, and for people employed in auxiliary medical services.'
			Art 96(3)	'No one shall be in any way whatever disadvantaged due for refusing to participate in or to perform a non-criminal abortion.'
			S 6(1)	'No doctor is obliged to perform a medically assisted procreation or to participate in it. This also applies in the upper services for health and nursing, medical and technical services or people working in emergency medical services.'
			S 6(2)	'No person shall be in any way whatever disadvantaged as a result of refusing to perform or participate in medically assisted reproduction in accordance with this Act.'
Belgium	General	Belgian Constitution	Art 19	'Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.'
	Specific	The Belgian Act on Euthanasia 2002	Ch VI, s 14	'The request and advance directive referred to in Sections 3 and 4 of this Act are not compulsory in nature. No physician may be compelled to perform euthanasia. person may be compelled to assist in performing euthanasia. Should the physician consulted refuse to perform euthanasia, then he/she must inform the patient and the persons taken in confidence, if any, of this fact in a timely manner, and explain his/her reasons for such refusal. If the refusal is based on medical reasons, then these reasons are noted in the patient's medical record.'
		Belgian Penal Code	Art 348, al 2, 6 <sup>o</sup>	'Neither a physician, nor a nurse, nor a medical assistant is obliged to cooperate with the termination of a pregnancy. The physician is obliged to inform a patient interested in abortion, during the first visit, of his refusal.'
Bulgaria	General	Bulgarian Constitution (adopted 12 July 1991)	Art 38(1)	'Freedom of conscience, thought, and choice of religion or religious or atheistic beliefs are inviolable. The state shall assist the keeping up of tolerance and respect among believers of different faiths as well as between believers and nonbelievers.'
			Art 38(2)	'Freedom of conscience and religion may not be detrimental to national security, public order, public health and morality, or the rights and freedoms of other citizens.'
			Art 59(2)	'Religious or other beliefs are not grounds for refusing to fulfill the obligations imposed by the Constitution and laws.'
Croatia	General	Constitution of the Republic of Croatia (consolidated and confirmed 6 July 2010)	Art 17	'Even in cases of clear and present danger to the existence of the state, no restrictions may be imposed upon the provisions of this Constitution stipulating the right to life, prohibition of torture, cruel or unusual treatment or punishment, and concerning the

	Specific			legal definitions of criminal offences and punishment, and the freedom of thought, conscience and religion.'
			Art 40	'Freedom of conscience and religion and the freedom to demonstrate religious or other convictions shall be guaranteed.'
			Art 48	'Conscientious objection shall be allowed to all of those who, based on religious or moral conviction, are not willing to perform military duties in the armed forces. Such persons are obliged to perform other duties as specified by law.'
			Art 3	'Because of their ethical, religious or moral beliefs or beliefs, nurses have the right to assert conscientious objection and refuse to conduct medical / nursing care if doing so does not conflict with the rules of the profession, and if it does not cause permanent damage to the patient's health or endanger the patient's life. Nurses must promptly inform the patient and parent or responsible person about such objections.'
		Law on Nursing (Zakon o sestrinstvu, pročišćenitekstzakona NN 121/03, 117/08, 57/11), Art 3	Art 3	'Because of their ethical, religious or moral beliefs or beliefs, nurses have the right to assert conscientious objection and refuse to conduct medical / nursing care if doing so does not conflict with the rules of the profession, and if it does not cause permanent damage to the patient's health or endanger the patient's life. Nurses must promptly inform the patient and parent or responsible person about such objections.'
		Law on Medical Practice (Zakon o liječništvu, pročišćenitekstzakona, NN 121/03, 117/08)	Art 20	'Because of their ethical, religious or moral beliefs or beliefs, doctors have the right to asset a conscientious objection and refuse to conduct diagnosis, treatment and rehabilitation of the patient, if doing so does not conflict with the rules of the profession, and if it does not cause permanent damage to the health of or threaten the life of a patient. Doctors must promptly inform patients about their objections and refer them to another physician of the same profession. In the case of doctors employed in a medical institution, a company, or other legal entity that performs health services, or who work with another doctor in a private practice, they must notify their supervisor or employer of their objection.'
Cyprus	General	Constitution of the Republic of Cyprus	Art 18(1)	'Every person has the right to freedom of thought, conscience and religion.'
			Art 18(6)	'Freedom to manifest one's religion or belief shall be subject only to such limitations as are prescribed by law and are necessary in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the rights and liberties guaranteed by this Constitution to any person.'
	Specific	Doctors (Council, Discipline and Pension Fund) Law of 1967 & 1970	Art 8	'...a doctor may refuse medical treatment to a patient except in cases of emergency or humanitarian duty; this general provision may be relied upon, in principle, where the motivations for refusing to provide a medical treatment are religious or ideological.'
Czech Republic	General	Charter of Fundamental Rights and Freedoms (incorporated as part of the Constitution of the Czech	Art 15(1)	'The freedom of thought, conscience, and religious conviction is guaranteed. Everyone has the right to change her religion or faith or to

	Specific	Republic under Art 112(1) of the Constitution, both adopted 16 December 1992)	Art 15(3)	have no religious conviction.’ ‘No one may be compelled to perform military service if such is contrary to his conscience or religious conviction. Detailed provisions shall be laid down in a law.’
Denmark	Specific	Consolidated Act on Induced Abortion (LovbekendtgÅrelse, 2006-10-16 nr. 541)	S 10(2)	‘...doctors, nurses, midwives and social and health assistants, or students in these professions, for whom it is contrary to their ethic or religious beliefs to perform or assist in induced abortion, can apply for and be granted exemption.’
Estonia	General	Constitution of the Republic of Estonia	S 40	‘Everyone is entitled to freedom of conscience, freedom of religion and freedom of thought.’
Finland	General	Finnish Constitution 1999	S 11	‘...Freedom of religion and conscience entails the right to profess and practice a religion, the right to express one's convictions and the right to be a member of or decline to be a member of a religious community. No one is under the obligation, against his or her conscience, to participate in the practice of a religion.’
France	General	Declaration of Human and Civic Rights of 26 August 1789	Art 10	‘No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order.’
		Act of 9 December 1905 on the separation of Church and State	Art 1	‘The Republic shall ensure freedom of conscience. It shall guarantee the free practice of religion, subject only to restrictions imposed in the interests of public order.’
	Specific	Code of Public Health (Code de la sant�e publique)	Art L.2212-8	Allows medical physicians to invoke a ‘conscience clause’ on the basis of which they may refuse to perform an abortion. However, they are obliged to inform the woman seeking abortion without delay of their intention to invoke the clause.
		CC decision no. 2001-446DC, June 27, 2001, Rec 74, [11]-17] (Fr)	-	This decision of the French Constitutional Court recognized the principle that conscientious objection is a right afforded to individuals, not institutions, and upheld the repeal of paragraphs of the Code of Public Health, removing the possibility that departments heads of public health establishments could refuse to allow the provision of abortion services in their departments.
		Loi No 2013-404 du 17 Mai 2013 ouvrant le mariage aux couple de personnes de meme sexe; Circulaire du 13 Juin 2013	-	This recent French statute modified the French Code Civil to achieve marriage equality in France. A regime of sanctions imposable on officials who refuse to perform same-sex marriages was summarised by a circulaire of 13 June 2013. The Conseil Constitutionnel dismissed a challenge by seven mayors alleging that the statute failed to provide a conscience clause and thus interfered with their freedom of conscience. The matter has moved to Strasbourg as of 24 February 2014. See further D Marrani, ‘France: no conscientious objection defence for mayors refusing to marry same-sex couples’ [2014] PL 337.

Germany	General	Basic Law for the Federal Republic of Germany (Grundgesetz) (adopted 8 May 1949)	Art 4(1)	'Freedom of faith and of conscience, and freedom to profess a religious or philosophical creed, shall be inviolable.'
	Specific		Art 4(3)	'No person shall be compelled against his conscience to render military service involving the use of arms. Details shall be regulated by a federal law.'
			Art 12a(2)	'Any person who, on grounds of conscience, refuses to render military service involving the use of arms may be required to perform alternative service...'
		<i>Judgment of the Bavarian Higher Administrative Court of 03/07/1990, BayVGH DVBl. 1990, 880-82 (FRG); Judgment of the Federal Administrative Court of 12/13/1991, BVerwGE 89, 260-70 (FRG)</i>	-	The Bavarian High Administrative Court and the Federal Administrative Court of Germany ruled that a municipality's job advertisement for a chief physician in a women's hospital, which included a requirement that the physician in a women's hospital, which included a requirement that the physicians be willing to perform abortions, was not in violation of a law providing that no one is obligated to perform abortions.
Greece	General	Constitution of Greece (revised 6 April 2001)	Art 13(1)	'Freedom of religious conscience is inviolable. The enjoyment of civil rights and liberties does not depend on the individual's religious beliefs.'
			Art 13(5)	'No person shall be exempt from discharging his obligations to the State or may refuse to comply with the laws by reason of his religious convictions.'
			Art 16(2)	'Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of the Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.'
Hungary	General	Constitution of the Republic of Hungary (Act XX of 1949)	Art 60(1)	'In the Republic of Hungary everyone has the right to freedom of thought, freedom of conscience and freedom of religion.'
			Art 60(2)	'This right shall include the free exercise or acceptance of a religion or belief, and the freedom to publicly or privately express or decline to express, exercise and teach such religions and beliefs by way of religious actions, rites or in any other way, either individually or in a group.'
	Specific	Judgment 64/1991, (XII.17) AB határozat	-	The Hungarian Constitutional Court recognized that medical practitioners have a right to religious conscientious objection, however it considered that certain restrictions to the freedom of religion which this right is derived from may be allowed unless they are unreasonable. Specifically, the Court considered that in any employment relationship, the employee may not object to the performance of duties which form a substantive part of the profession. It considered that only non therapeutic abortions – i.e., not medically prescribed – could be considered as

				not part of the normal activities of a gynaecologist.
Ireland	General	Constitution of Ireland (adopted 29 December 1937)	Art 44(2)(1)	'Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.'
Italy	Specific	Law No 194 of 22 May 1978 on the social protection of motherhood and the voluntary termination of pregnancy, Gazz. Ugg., Part I, 22 May 1978, No 140, 3642-46 (Italy)	Art 9	Section 9 requires health care personnel to submit a written declaration of their conscientious objection to abortion to the medical director of their employer healthcare institution and to the regional medical officer.
Latvia	General	Constitution of Latvia (adopted 15 Feb 1922, significantly amended 1998)	Art 100	'Everyone has the right to freedom of thought, conscience and religion. The church shall be separate from the State.'
Lithuania	General	Constitution of Lithuania	Art 26(1)	'Freedom of thought, conscience, and religion shall not be restricted.'
Luxembourg	-			
Malta	General	Constitution of Malta (adopted 21 September 1964)	Art 40(1)	'All persons in Malta shall have full freedom of conscience and enjoy the free exercise of their respective mode of religious worship.'
Netherlands	Specific	Constitution of the Kingdom of the Netherlands 2008	Art 99	'Exemption from military service because of serious conscientious objections shall be regulated by Act of Parliament.'
		Opinions 1997-46, 2000-13 and 2002-26 of the independent equality body (Commissie Gelijke Behandeling (CGB))	-	The CGH allowed the claim of the applicant, who was public servant who for religious reasons refused to celebrate a same-sex marriage and whose contract was not renewed on that ground. The CGB found that the Gender Equal Treatment Act had been violated as other public servants were available and prepared to perform same-sex marriage so that there were insufficient reasons to renew the contract of the applicant. The CGB observed that in preparing the Gender Equal Treatment Act, the legislator had acknowledged that conscientious objections on religious grounds do occur and that, in principle, they ought to be respected.
Poland	General	Constitution of the Republic of Poland (adopted 2 April 1997)	Art 53	'Freedom of conscience and religion shall be ensured to everyone.'
Portugal	General	Constitution of the Portuguese Republic (7 <sup>th</sup> revision, 2005)	Art 41(1)	'Freedom of conscience, religion and worship shall be inviolable.'
			Art 41(6)	'The right to be a conscientious objector, as laid down by the law, shall be guaranteed.'
		Law of Religious Freedom 2001 (Law n° 16/2001)	Art 12(1)	'Freedom of conscience includes the right to object to the compliance of laws that contradict the imperative commands of one's own conscience, within the limits of the rights and duties imposed by the Constitution and under the terms of the law that may regulate the exercise of the conscientious objection.'
	Specific		Art 12(2)	'The commands of conscience that are considered as imperative are those whose infringement involves a serious offence to one's moral integrity and, consequently, make any other behaviour as not mandatory.'
			Art 12(3)	'Conscientious objectors to military service,

				without excluding those who also invoke a conscientious objection to civil service, have the right to a civil service system, which respects the commands of their conscience, as long as it is compatible with the principle of equality.'
Romania	General	Constitution of Romania	Art 29(2)	'Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect.
Slovakia	General	Constitution of the Slovak Republic	Art 24(1)	'The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed, or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express his thoughts.
	Specific		Art 25(2)	'No one may be forced to perform military service if it is against his conscience or religious creed. Details will be laid down by law.'
Slovenia	General	Constitution of the Republic of Slovenia	Art 41	'Freedom of Conscience: Religious and other beliefs may be freely professed in private and public life. No one shall be obliged to declare his religious or other beliefs...'
			Art 46	'The right of conscientious objection shall be permitted in such circumstances as are determined by statute, to the extent that the rights and freedoms of others are not affected.'
	Specific	Health Services Act	Art 56	'Healthcare workers may reject a medical intervention if they believe that it is not in accordance with their conscience and with international rules of medical ethics. Healthcare workers must notify the healthcare institute of their conscientious objections. Healthcare institutes must take these into consideration, but must ensure that patients' healthcare rights are exercised without disruption. Healthcare workers may not refuse to provide emergency medical assistance.'
			Slovenian Code of Medical Deontology Practice	Art 5
		Art 14		'Physicians shall be obliged to pursue their profession responsibly, professionally, conscientiously and precisely for every patient, irrespective of race, sex, ethnicity, religious persuasion, political convictions, and socio-economic position and irrespective of their personal relationship with the patient or the family thereof. Physicians shall be free to choose methods and means of treatment, whereby they shall be obliged to consistently take into consideration the achievements of medical science and the principles of professional behaviour. Physicians shall be obliged to reject any intervention that according to their professional convictions and conscience

				could be unethical or harmful to the patient.'
			Art 42	'Physicians may refuse to carry out an abortion or sterilisation if it is not in accordance with their beliefs and conscience and it is not a case of emergency medical assistance. They shall be obliged to refer the patient to another capable physician, or must inform the healthcare institute of their refusal in order to ensure the execution of such interventions in accordance with the law.'
Spain	General	Constitution of Spain (October 31 1978)	Div 2, s 16(1)	'Freedom of ideology, religion and worship is guaranteed, to individuals and communities with no other restriction on their expression than may be necessary to maintain public order as protected by law.'
	Specific		Div 2, s 30(2)	'The law shall determine the military obligations of Spaniards and shall regulate, with all due guarantees, conscientious objection as well as other grounds for exemption from compulsory military service; it may also, when appropriate, impose a community service in place of military service.'
		Law 1/2003 of 28 January 2003 on the rights and information of the patient in the Community of Valencia ( <i>Ley 1/2003, de 28 de enero, de la Generalitat, de Derechos e Información al Paciente de la Comunidad Valenciana</i> (DOGV de 31 de enero))	Art 17(2)	This specific legislation adopted by the Autonomous Community of Valencia recognizes the right for each patient to adopt a 'life will' according to which she may express the will not to be artificially kept alive in certain circumstances where life-saving medical treatment would have to be delivered. It allows for a conscientious objection clause benefitting health care practitioners, which they may invoke in order not to have to be instrumental in executing that will. But it also provides an obligation for the public authorities, where such conscientious objection is raised, to adopt the necessary measures to ensure that the will of the patient is respected. In practice, this means that another health care practitioner must be available to execute the will of the patient, and that it is the duty of the public administration to ensure this availability.
		STC 53/1985, judgment of 26 August 1988	-	The Constitutional Court held that although the Organic Law 7/1980 on freedom of religion ( <i>Ley Orgánica 7/1980, de 5 de julio, de libertad religiosa</i> (BOE del 24 de julio)) does not refer to conscientious objection, this is without prejudice to the interpretation which could be given to Article 16 of the Constitution, which is to be interpreted in accordance with international and European human rights treaties.
		STC 19/1985, judgment of 13 February 1985	-	The Constitutional Court held that religious objection may not be invoked in order to modify unilaterally the existing contractual relationships with the employer.
	<i>Auto del Juzgado Contencioso-Administrativo No 3 de Málaga, Piezaseparadamedidas provisionales</i>	-	A judge in Málaga held that the conscientious clause in the abortion law, allowing providers to refuse to provide services, applies only to the	



		n° 12.1/2011. Pmtó, Especial protecciónderechos fundamentals n° 39/2011. 29 March, 2011.		performance of a termination of pregnancy and not to the provision of information and referrals to non-objecting providers.
Sweden	-			
United Kingdom	Specific	Abortion Act 1967, s 4	S 4	'...no person shall be under any duty whether by contract or by statutory or other legal requirement, to participate in any treatment authorised by this Act to which he has a conscientious objection: Provided that in any legal proceeding the burden of proof conscientious objection shall rest on the person claiming to rely on it.'
		Human Fertilisation and Embryology Act 1990, s 38(1)	S 38(1)	'No person who has a conscientious objection to participating in any activity governed by this Act shall be under any duty, however arising, to do so.' (NB: There is no definition of 'conscientious objection' in the Abortion Act 1967 or the Human Fertilisation and Embryology Act 1990.)
		Marriage Act 1949 (as amended by the Gender Recognition Act 2004) s 5B(1)	S 5B(1)	'A clergyman is not obliged to solemnise the marriage of a person if the clergyman reasonably believes that the person's gender has become the acquired gender under the Gender Recognition Act 2004.'
			S 5B(2)	'A clerk in Holy Orders of the Church in Wales is not obliged to permit the marriage of a person to be solemnised in the church or chapel of which the clerk is the minister if the clerk reasonably believes that the person's gender has become the acquired gender under that Act.'

## Further Evidence of State Practice

- A. *Iceland*: 'All persons have the right to form religious associations and to practice their religion in conformity with their individual convictions. Nothing may however be preached or practised which is prejudicial to good morals or public order'; 'No one may lose any of his civil or national rights on account of his religion, nor may anyone refuse to perform any generally applicable civil duty on religious grounds.': Constitution of the Republic of Iceland (No, 33, 17 June 1944; last amended 24 June 1999), Articles 63 and 64.
- B. *Norway*: Norway has a comprehensive regulatory and oversight framework on conscientious objection to abortion that includes ensuring the availability of providers willing and able to perform abortions.<sup>19</sup>
- (i) 'The county municipalities shall organise hospital services such that the women in their area may have a pregnancy termination performed at any time, of the Hospitals Act dated 19 June 1979 no 57, s 2. The organisation shall take into account the health

<sup>19</sup> See further Christina Zampas and Xiemna Andi6n-Iba6ez, 'Conscientious Objection to Sexual and Reproductive Health Services: International Human Rights Standards and European Law and Practice' (2012) 19 European Journal of Health Law 231, 247.



personnel who, for reasons of conscience, do not wish to perform or assist in such operations’: The Act dated 13 June 1975 no 50 concerning Termination of Pregnancy, with Amendments in the Act dated 16 June 1987 no 5, section 14.

- (ii) ‘Exemption on grounds of conscience: Health personnel who, for reasons of conscience, do not wish to perform or assist in pregnancy terminations shall, via the medical superintendent, give written notification of such a wish, together with a more detailed explanation, to the administrative head of the hospital/institution. The right to exemption on grounds of conscience applies only to health personal who either performs or assists in the operation itself, and not to those who attend to, nurse or treat the woman before and after the operation. The exemption must apply in general to all operations pursuant to the Act.’: Regulations for the Implementation of the Act dated 13 June 1975 no 50 concerning Termination of Pregnancy, with Amendments in the Act dated 16 June 1978 no 66, cf s 12 of the Act (laid down by Royal Decree, 1 December 1978), section 20.

C. *Switzerland*: ‘Freedom of religion and conscience is guaranteed.’ Federal Constitution of the Swiss Confederation (of 18 April 1999), Article 15(1).

### **No Right to Abortion in International Law**

17. While there is a strong European consensus on the protection of individual rights of conscience in Europe, the authorities at the “Hoglandssjukhuset” have incorrectly relied a fabricated “right” to abortion. No right to abortion exists in international law. The European Court of Human Rights has explicitly stated that the Convention does not contain a right to abortion.<sup>20</sup> The Court further recognizes that with the advancement of scientific progress and various forms of research involving the embryo, greater protections are now being afforded the pre-born child in international law.<sup>21</sup>
18. Nor is the issue of abortion part of the competency of the European Union. This has been clarified on several occasions. For example, in 2006, the European Council stated that: “The European Union treaties have not bestowed on the Community or the Union the competence whereby the Union could regulate on abortions.”<sup>22</sup> And further still, the European Council has stated that the term “reproductive health” does not include any reference to a right to abortion and the Council does “not accept that abortion should form part of policies on reproductive and birth control education.”<sup>23</sup>

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<sup>20</sup>ECHR: *A, B and C v. Ireland* [GC], Application No. 25579/05, judgment of 16 December 2010.

<sup>21</sup>ECHR: *Vo v. France*, Application No. 53924/00, Judgment of 08/07/2004, § 84.

<sup>22</sup> Paula Lehtomäki, President-in-Office of the Council, 13 December 2006, replying to an Oral Question (H-0983/06) by Bastiaan Belder, MEP. Emphasis added. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20061213&secondRef=ITEM-021&language=EN#3-429>

<sup>23</sup> Answering questions from MEPs Bernd Posselt (H-0729/03) and Dana Scallon (H-0794/03), 4 December 2003. Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=CRE&reference=20031216&secondRef=ITEM-005&language=EN#2-178>



19. And finally not a single binding international human rights document holds that abortion is a right. Both the 1994 International Conference on Population and Development in Cairo and in the Fourth World Conference on Women that took place in Beijing in 1995 held that governments have an obligation to eliminate and reduce abortions and to help woman avoid repeat abortions.<sup>24</sup> The outcome documents also hold that abortion should never be promoted as a method of family planning.<sup>25</sup> If abortion was indeed a “right”, clearly international law would not be dictating that it was something governments need to reduce or eliminate.

## Conclusion

20. To conclude, the dismissal of midwife Grimmark is a troubling development stemming from Sweden, being out of step with the rest of Europe, and in fact the international community, in allowing for conscientious objection for medical personnel in the area of abortion. Such measures are a serious breach of international law and an insurmountable obstacle for a large segment of the population to entering the medical profession solely by virtue of their moral or religious convictions. Such a blatant disregard for rights of conscience cannot be allowed to stand in Sweden.

21. The European Court of Human Rights has held that guaranteeing freedom of thought, conscience and religion assumes State neutrality.<sup>26</sup> Therefore, where necessity and proportionality are lacking, a State must seek to **accommodate** religious and moral beliefs no matter how irksome it finds them. **This notion stems from the reluctance of European civilization – born of decency, forbearance, and tolerance – to compel our fellow citizens to humiliate themselves by betraying their own consciences.**

Respectfully filed,

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Senior Legal Counsel  
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<sup>24</sup>ICPD Programme of Action at § 8.25.

<sup>25</sup>ICPD Programme of Action at § 7.24.

<sup>26</sup>ECHR, 13 December 2001, *Metropolitan Church of Bessarabia and Others v. Moldova*, Appl. no. 45701/99., § 123.